

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WILSON COUNTY

2010 SEP -9 10:23

FILE NO.: 10CV51738

LEE and wife ADALAIDA RUMLEY )

Plaintiffs, )

vs. )

TRAVIS CONSTRUCTION, INC., and )  
NATIONWIDE INSURANCE COMPANY )

Defendants. )

COMPLAINT  
(Jury Trial Demanded)

NOW COME Plaintiffs, complaining of Defendants, and alleges and says:

**General Allegations**

I.

This is an action for breach implied warranty of workmanlike construction and breach of contract; and that

II.

Plaintiffs, Lee and Adalaida Rumley (hereafter "the Rumleys"), were formerly citizens and residents of the City of Wilson in Wilson County, North Carolina; and that

III.

Defendant, Travis Construction, Inc. (hereafter "Travis Construction"), is a Corporation with its principal office in the City of Wilson in Wilson County, North Carolina; and that

IV.

Defendant, Nationwide Insurance Company (hereafter "Nationwide"), is a Corporation licensed to do business in the state of North Carolina; and that

V.

Nationwide is the insurance provider of Travis Construction; and that

## **Breach of Implied Warranty of Workmanlike Construction**

### **VI.**

Travis Construction did in fact build a home located at 2710 Winding Ridge Road located in the City of Wilson, in Wilson County, North Carolina; and that

### **VII.**

Travis Construction did in fact sell the home located at 2710 Winding Ridge Road located in the City of Wilson, in Wilson County, North Carolina on August 7<sup>th</sup>, 2006 to the Rumleys for valuable consideration in the amount of \$176,000.00; and that

### **VIII.**

The Rumleys were the initial purchasers and sole inhabitants of the home; and that

### **IX.**

Damage to the interior of the home includes, but is not limited to: the doors are not square in their frames and are binding, there exist diagonal cracks occurring at the corners of the door frames, there are visible cracks in some of the flooring; and that

### **X.**

In the crawl space underneath the home, there exist a number of locations where the girders are not bearing on the isolated interior piers, such that gaps of up to two inches exist between the girders and the isolated piers; and that

### **XI.**

The cause of the damage to the interior of the home and the gaps between the girders and the isolated piers is that the foundation of the home was built on expansive soils; and that

### **XII.**

As the moisture content of the soils increase and decrease, the soil upon which the foundation was laid swell and contract; and that

### **XIII.**

The damage to the home would have been prevented or at least mitigated with the installation of a vapor barrier, and deeper and stronger foundation piers; and that

XIV.

Travis Construction knew or should have known, of the condition of the soil; and that

XV.

Travis Construction failed to install said vapor barrier and the proper foundation; and that

XVI.

Failure to install said vapor barrier and the proper foundation which caused the subsequent damage to the home and the gaps between the girders and the isolated piers constitutes a breach of implied warranty of workmanlike construction; and that

XVII.

As a result of the damage to the interior of the home and the gaps between the girders and the isolated interior piers, the home is now unsafe, uninhabitable, and unsalable.

#### **Breach of Contract**

XVIII.

Travis Construction is insured by Nationwide; and that

IXX.

Said insurance coverage by Nationwide covers negligent acts and omissions of Travis Construction, Inc.; and that

XX.

The omission of a vapor barrier by Travis Construction, Inc. leading to the breach of the implied warranty of workmanlike construction is covered under the insurance policy provided by Nationwide; and that

XIX.

As purchaser of a home constructed by Travis Construction, Inc., the Rumleys are third-party beneficiaries to the insurance contract between Travis Construction, Inc. and Nationwide; and that

**XXII.**

Nationwide has investigated the allegations contained in paragraphs VI through XVII; and that

**XXIII.**

Nationwide has determined that there is in fact a defect in the foundation of the home located at 2710 Winding Ridge Road, located in the City of Wilson, in Wilson County, North Carolina caused by Travis Construction; and that

**XXIV.**

Nationwide attempted to remedy the defect in the foundation in December of 2008 without success; and that

**XXV.**

Nationwide, by and through both the Rumleys and their own independent investigation have been notified that there exists a viable solution to correct the defect in the foundation, that is to replace the existing block piers with helical piers; and that

**XXVI.**

The cost of implementing this corrective action is approximately \$24,000 and would carry a warranty for the life of structure; and that

**XXVII.**

Nationwide has neither implemented this corrective action, disbursed any other funds, nor has Nationwide made any other payment to the Rumleys, or to otherwise remedy the defect of the home; and that

**XXVIII.**

Failure to disburse funds or take any other action to remedy the defect of the home in a timely manner constitutes a breach of contract with Travis Construction; and that

**XXIX.**

The rights of the Rumleys as third party beneficiaries have vested; and that

XXX.

The Rumleys have standing to enforce the contract between Travis Construction and Nationwide; and that

XXXI

As a result of the actions of the Defendants, the Rumleys incurred damage in a sum of excess of \$10,000.00 for the loss of their property, use of said property, and breach of their agreements.

**WHEREFORE**, Plaintiffs pray that they have in recovery against Defendants:

- a) Judgment in a sum in excess of \$10,000.00 for compensatory damages;
- b) The cost of this action, interest and reasonable attorney's fees as allowed by law;
- c) Such other and further relief as to the court seems proper and just.

**Jury Demand**

Plaintiffs hereby demand a trial by jury on all counts.

This 8 day of September, 2010.

FARRIS & FARRIS, P.A.



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